sec. 757; *Greenl., Ev.*, sec. 340 (15th ed.). The testimony of a polygamous wife was held cause for reversal in *Bassett v. United States*, 137 U. S. 496. To test competency, either the man or the woman may be examined on the *voir dire* as to marriage, *Seeley v. Engell*, vc *N. Y.* 542, but to establish the marriage, proof *aliunde* must be adduced. By admitting that which the witness is used to prove she is *a fortiori* incompetent.

CARRIERS OF PASSENGERS—DEFECTIVE TICKET—EJECTION—REMEDY.—WESTERN MARYLAND R. Co. *v.* SCHAUN, 55 Atl. 701 (Md.).—Because of a defect in her return ticket, due to the negligence of the conductor on the outgoing trip, plaintiff was ejected from the defendant's train. *Held*, that plaintiff could recover in an action ex contractu only, and not in one ex delecto.

There are decisions which hold that, in such circumstances, the passenger must either pay his fare or leave the train, and sue ex contractu *Hall v. M. & C. R. Co.*, 15 Fed. 57; *Townsend v. R. Co.*, 56 N. Y. 295. But the weight of authority is that he may resist ejection, and recover damages therefor. *New York etc., R. Co. v. Winters.* 143 W. S. 60; *Lake Erie, etc., R. Co. v. Fix*, 88 Md. 381; *Wood, R. R's.*, sec. 349. In Massachusetts a distinction is drawn between those cases where the passenger could have perceived the defect in the ticket upon receiving it and where he could not. *Murdock v. R. Co.*, 137 Mass. 293. The form of action usually adopted is one in tort. *Laird v. Traction Co.*, 166 Pa. St. 4; *Gorman v. R. Co.*, 97 Cal. 1. But it would seem that the same result could be reached in one ex contractu. *Johnson v. R. Co.*, 46 Fed. 347.

EMINENT DOMAIN—RAILROADS—ERECTION OF VIADUCT—STATIONS.—DOLAN ET AL. v. NEW YORK & HARLEM R. Co., 67 N. E. 612 (N. Y.).—The legislature ordered the erection of a steel viaduct through Park avenue. Upon completion the defendant was required to run its trains over it instead of through a depressed cut and over the highway. It was also required that stations which occupied more of the road than the viaduct, be erected. *Held*, that no damages could be recovered by reason of the construction of the viaduct or operation of trains thereon, but damages may be awarded as a consequence of the erection of the stations.

In most of the cases concerning the Park avenue viaduct in New York City there has been a dissenting opinion and no little difficulty has confronted the courts to ascertain precisely the rule to be followed. *Dolan v. N. Y. & H. R. Co.*, 77 N. Y. Supp. 815. The decision reached in the case under discussion and which seems to define the law is that the building of the viaduct in place of the cut is a public improvement effected through a governmental agency, and hence the defendant is not liable to abutting property owners for damages resulting from the operation of its trains thereon, but the stations are ordered to be erected to afford suitable facilities for the public, and where they interfere with the easements of light, air and access the company is liable. It seems quite impossible, however, to reconcile the first proposition with the decision in *Lewis v. N. Y. & H. R. Co.*, 162 N. Y. 202.

EX POST FACTO LAW—STATUTORY CHANGE OF PUNISHMENT BETWEEN CONVICTION AND SENTENCE.—STATE v. ROONEY, 95 N. W. 513 (N. D.).—After

the conviction of the defendant for murder, and before sentence, a new statute went into effect extending the time after sentence within which the judgment of death should be carried into effect. *Held,* that the statute was not *ex post facto* as to the defendant for the reason that the extension of time was a mitigation and not an increase of punishment.

The argument of the court is (1) that death is the extreme penalty that can be inflicted; (2) any change of penalty short of that is a mitigation; and (3) postponement of the time of its infliction is also a mitigation. The only authority directly in point on the third proposition is *People v. McNulty,* 93 Cal. 427, which is directly opposed to the present decision. (Three justices dissented.) In *In re Petty,* 22 Kan. 477, the subsequent statute extended the time within which the execution must take place from eight weeks to not less than one year, and provided further, that it should take place there only upon the issuance of the governor's warrant; held, *ex post facto* and void. And the decision was the same in respect to a similar statute in *Hartung v. People,* 22 N. Y. 95; although the doctrine there laid down that any alteration in the manner of punishment is necessarily *ex post facto* as to one convicted before the going into effect of the alteration has been repudiated. *People v. Hayes,* 140 N. Y. 484.

INDEMNITY INSURANCE—CONSTRUCTION OF POLICY—LEGAL EXPENSES.—CORNELL V. TRAVELER'S INS. CO., 67 N. E. 578 (N. Y.).—An indemnity insurance policy provided for the liability of the insurers in case of accidental injury caused in the course of business of the insured to persons other than employes, and made it the duty of the insurer to negotiate settlement of such claims. Election was given to the company, in event of suit, to pay the full amount of its liability to the insured or defend the proceedings, consent in writing being necessary to bind it. *Held,* that the insurer was not liable for the successful defense by the insured of suits brought against him without legal basis. Cullen, Vann and Werner, JJ., *dissenting.*

The court decided that the obligation of the insurer to defend claims against the insured included only valid claims, since it is not unusual for business men to be sued on claims without just basis and, in such a case, the plaintiff must bear the loss as it was not insured against. The dissenting opinion is based on the proposition that the insurers should defend claims of such a character that if established, they would be liable. In the cases cited in support of this contention, the language seems to have been broader than in the case under discussion and did not restrict indemnity to "circumstances which shall impose on the insured a liability to the person injured" as above.

INJUNCTION—GROUNDS OF REMEDY—STRIKES.—MASTER HORSESHOERS, ETC., V. QUINLIVAN, 82 N. Y. SUPP. 288.—Defendants, a voluntary association of journeymen, demanded that plaintiff, an incorporated association of master mechanics, should permit them to affix their stamp, or trademark, to the work done by them in the shops of plaintiff's members. Upon refusal of the demand defendants declared a strike. *Held,* an injunction may be had restraining defendants from committing acts of violence against members of plaintiff association or their employes. Van Brunt, P. J., and Ingraham, J., *dissenting.*